

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNI SEMMA,

Defendant.

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Crim. Case No. 18-20516

Paul D. Borman

United States District Judge

ORDER GRANTING GOVERNMENT'S MOTION IN LIMINE TO  
EXCLUDE DEFENDANT'S DELINQUENTLY FILED TAX RETURNS

Defendant is charged with 25 counts of violating federal tax law with regard to Blue Marlin LLC, and also his failure to pay tax in 2012.

The time periods as to payroll tax returns at issue were from the 1<sup>st</sup> quarter of 2008 to the 4<sup>th</sup> quarter of 2010, and the 3<sup>rd</sup> quarter of 2012 through the 4<sup>th</sup> quarter of 2015. The only payroll tax returns (941) which defendant timely filed from 2008 to 2005 were for the 1<sup>st</sup> quarter of 2001 and the 2<sup>nd</sup> quarter of 2012. Count 25 charges Defendant with failing to file his 2012 personal individual tax return.

In December 2017, Defendant filed delinquent forms 941 for Blue Marlin LLC for 2011 through 2015 (but did not pay the delinquent payroll taxes). These returns, which were due between April 30, 2011 and April 30, 2015, were between two years and four years delinquent at the time they were filed.

The Government filed a Motion in Limine on March 21, 2019 to exclude these delinquently-filed tax returns. On March 4, 2019, Defendant filed a response.

The Supreme Court pointed out in *Sansone v. United States*, 380 U.S. 343, 354 (1965) that an intent to report and pay the tax in the future does not vitiate the willfulness requirement of §7203.


The United States Court of Appeals for the Seventh Circuit, in *United States v. Sawyer*, 607 F.2d 1190, 1192 (7<sup>th</sup> Cir. 1979) rejected the defendant's claim "that the jury should have been instructed that his failure to file was not 'willful' if it resulted from an 'innocent reason' 'or justifiable excuse.'" Accord, *United States v. Ming*, 466 F.2d 1000, 1005 (7<sup>th</sup> Cir. 1972).

The Court concludes that evidence that Defendant Semma filed returns several years after they were due is irrelevant to the charges in this case and would lead to confusion among the jury.

Accordingly, the Court GRANTS the Government's Motion in Limine to Exclude Defendant's Delinquently Filed Tax Returns.

SO ORDERED.

DATED: MAY 02 2019



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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE